

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TEODORO JOSE GUZMAN, on behalf of  
himself, and others similarly situated

Plaintiff,

-against-

J.J. TAPPER & CO., INC., *dba*  
THE GARDEN; THE EPICUREAN  
GARDEN, LLC *dba* THE GARDEN;  
UNITED T LLC *dba* THE GARDEN,  
*or any other business entity*  
*doing business as "THE GARDEN"*,  
located at 917-921 Manhattan Avenue,  
Brooklyn, NY 11222; and JOHN A. TAPPER,  
and ELIZABETH TAPPER, individually,

Defendants.

Case No.: 19-cv-670 (DLI) (SJB)

**ANSWER AND AFFIRMATIVE  
DEFENSES**

**JURY TRIAL DEMANDED**

J.J. TAPPER & CO., INC., *dba* THE GARDEN; THE EPICUREAN GARDEN, LLC, UNITED  
T LLC, JOHN A. TAPPER, and ELIZABETH TAPPER (collectively known as the  
“Defendants”), by and through their attorneys, Fisher Taubenfeld LLP, for their Answer to the  
Complaint respectfully allege as follows:

**INTRODUCTION**

1. Paragraph 1 of the Complaint sets forth a legal conclusion, and therefore no  
response is required. To the extent a response is required, Defendants admit  
that Plaintiff has filed this lawsuit under the FLSA.
2. Paragraph 2 of the Complaint sets forth a legal conclusion, and therefore no  
response is required. To the extent a response is required, Defendants admit  
that Plaintiff has filed this lawsuit under the NYLL.

### **JURISDICTION AND VENUE**

3. Paragraph 3 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiff purports to invoke the jurisdiction of the Court as set forth in Paragraph 3.
4. Paragraph 4 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiff purports to invoke the venue of the Court as set forth in Paragraph 4.

### **PARTIES**

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5.
6. Defendants admit the allegations stated in Paragraph 6 of the Complaint.
7. Defendants deny the allegations stated in Paragraph 7 of the Complaint, except admit that Defendant The Epicurean Garden, LLC is a domestic limited liability company.
8. Defendants admit the allegations stated in Paragraph 8 of the Complaint except deny that Defendant United T, LLC's dba is The Garden.
9. Paragraph 9 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 9 of the Complaint.
10. Paragraph 10 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 10 of the Complaint.

11. Defendants deny the allegations stated in Paragraph 11 of the Complaint.
12. Defendants deny the allegations stated in Paragraph 12 of the Complaint except admit that Plaintiff was employed at The Garden.
13. Defendants admit the allegations stated in Paragraph 13 of the Complaint except deny that corporate entities operated The Garden.
14. Paragraph 14 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 14 of the Complaint.
15. Paragraph 15 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 15 of the Complaint.
16. Defendants deny the allegations stated in Paragraph 16 of the Complaint.
17. Defendants deny the allegations stated in Paragraph 17 of the Complaint.
18. Defendants deny the allegations stated in Paragraph 18 of the Complaint.
19. Defendants deny the allegations stated in Paragraph 19 of the Complaint.
20. Defendants deny the allegations stated in Paragraph 20 of the Complaint.
21. Defendants deny the allegations stated in Paragraph 21 of the Complaint.
22. Defendants deny the allegations stated in Paragraph 22 of the Complaint.
23. Defendants deny the allegations stated in Paragraph 23 of the Complaint.
24. Defendants deny the allegations stated in Paragraph 24 of the Complaint.
25. Defendants deny the allegations stated in Paragraph 25 of the Complaint.
26. Defendants deny the allegations stated in Paragraph 26 of the Complaint.
27. Defendants deny the allegations stated in Paragraph 27 of the Complaint.
28. Defendants deny the allegations stated in Paragraph 28 of the Complaint.

29. Defendants deny the allegations stated in Paragraph 29 of the Complaint.

30. Defendants deny the allegations stated in Paragraph 30 of the Complaint.

31. Paragraph 31 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit the allegations stated in Paragraph 31 of the Complaint.

### **STATEMENT OF FACTS**

32. Defendants deny the allegations stated in Paragraph 32 of the Complaint except admit that Plaintiff was employed to work at the Garden.

33. Defendants deny the allegations stated in Paragraph 33 of the Complaint except admit that Plaintiff was employed to work at the Garden.

34. Defendants deny the allegations stated in Paragraph 34 of the Complaint.

35. Defendants deny the allegations stated in Paragraph 35 of the Complaint.

36. Defendants deny the allegations stated in Paragraph 36 of the Complaint.

37. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37.

38. Defendants deny the allegations stated in Paragraph 38 of the Complaint.

39. Defendants deny the allegations stated in Paragraph 39 of the Complaint.

40. Defendants deny the allegations stated in Paragraph 40 of the Complaint.

41. Defendants deny the allegations stated in Paragraph 41 of the Complaint.

42. Defendants deny the allegations stated in Paragraph 42 of the Complaint.

43. Defendants deny the allegations stated in Paragraph 43 of the Complaint.

44. Defendants deny the allegations stated in Paragraph 44 of the Complaint.

**STATEMENT OF CLAIMS**

**COUNT I**

**[Violation of the Fair Labor Standards Act]**

45. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 44 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.
46. Paragraph 46 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 46 of the Complaint.
47. Paragraph 47 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 47 of the Complaint.
48. Paragraph 48 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 48 of the Complaint.
49. Paragraph 49 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 49 of the Complaint.
50. Paragraph 50 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 50 of the Complaint.
51. Paragraph 51 of the Complaint sets forth a legal conclusion, and therefore no response is required.

52. Paragraph 52 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 52 of the Complaint.

53. Paragraph 53 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 55 of the Complaint.

56. Defendants admit that they maintained records and Plaintiff may attempt to obtain records during discovery as alleged in Paragraph 56 of the Complaint.

57. Paragraph 57 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 58 of the Complaint.

59. Paragraph 59 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 59 of the Complaint.

60. Paragraph 60 of the Complaint sets forth a legal conclusion, and therefore no response is required.

**COUNT II**  
**[Violation of the New York Labor Law]**

61. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 60 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.

62. Paragraph 62 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 62 of the Complaint.

63. Paragraph 63 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 63 of the Complaint.

64. Paragraph 64 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 66 of the Complaint.

**COUNT III**

**[Statutory Penalties Pursuant to the New York State Wage Theft Prevention Act]**

67. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 66 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.
68. Paragraph 68 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 68 of the Complaint.
69. Paragraph 69 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 69 of the Complaint.
70. Paragraph 70 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 70 of the Complaint.
71. Paragraph 71 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 71 of the Complaint.
72. Paragraph 72 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 72 of the Complaint.
73. Paragraph 73 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 73 of the Complaint.

74. Paragraph 74 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 74 of the Complaint.

75. Paragraph 75 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 75 of the Complaint.

### **PRAYER FOR RELIEF**

Defendants are not required to respond to the Complaint's "Prayer for Relief" paragraph as that paragraph is merely characterizations of the relief Plaintiff seeks. To the extent that the prayer for relief is deemed to contain allegations, Defendants deny each and every allegation and specifically deny that Plaintiff is entitled to damages, costs, interest, and any other form of relief.

### **DEFENDANTS' AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

76. Plaintiff's claims, in whole or in part, fail to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

77. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

#### **THIRD AFFIRMATIVE DEFENSE**

78. Defendants have at all times acted in good faith and had reasonable grounds for believing that their pay practices complied with the FLSA and NYLL.

**FOURTH AFFIRMATIVE DEFENSE**

79. Defendants are entitled to a set-off against any additional compensation that was paid to Plaintiff over and above her wages.

**FIFTH AFFIRMATIVE DEFENSE**

80. Plaintiff's claims are barred, in whole or in part, by the *de minimis* doctrine.

**ADDITIONAL AFFIRMATIVE DEFENSES**

81. Defendants reserve the right to plead additional affirmative defenses until and through the trial.

**WHEREFORE**, Defendants pray that the Court enter a judgment:

1. Dismissing the Complaint with prejudice;
2. Granting Defendants their costs, including attorneys' fees, incurred in this action; and
3. Granting such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a jury trial on all claims for relief to which they have a right to a jury trial.

Dated: New York, New York  
April 1, 2019

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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